

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:40 a.m. on February 9, 2004, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Melissa Gregory, Director of Appointments for the Governor
Thomas H. Slack

Others attending:

See Attached List.

Confirmation hearing on:

Thomas H. Slack, State Board of Tax Appeals

Melissa Gregory, Director of Appointments for Governor Sebelius, introduced Mr. Slack, noting that he would answer any questions the Committee may have concerning his appointment. A copy of Mr. Slack's Senate confirmation summary was distributed to Committee members. (Attachment 1)

Mr. Slack explained that he was appointed last year to the Board of Tax Appeals (BOTA) to fill an unexpired term which expired on January 15, 2004. He went on to say that he is a graduate of the University of Kansas with a degree in business administration and a law degree. After completing law school, he began working for Arthur Young and Company, which was one of the big eight public accounting firms in Kansas City. His job included business tax planning, estate tax planning, and corporate and personal income taxes. He then started a company with two friends from law school, and he obtained his CPA certificate during the time he owned that business. He was a treasurer and a vice president of the company. The company did consulting work for savings and loans and banks. The business was short term. Subsequently, he began working in the real estate appraisal business. He has been doing business and real estate appraisals for the last 20 years. When he was asked by the Governor to fill an unexpired term on BOTA, he met with Shirley Allen, who was then the Secretary of Appointments. They discussed the fact that, while he is a CPA and much of the work he has done over the previous 20 years is done by CPAs in active practice, his active practice is in Missouri, and he is licensed in Missouri. He explained that when his office built a building in 1988 and moved to the Kansas side, he was uncertain if, by statute, it was appropriate to represent himself as a CPA in Kansas. Therefore, his resume does not indicate he is holding himself out as a CPA. The Governor's office told him that there was no need to address the issue of his experience as an attorney, CPA, or MAI appraiser because they would like him to serve regardless. He was told that he would be filling an old position, and the Governor would appoint a CPA to one of the new positions. He emphasized that the Governor was not misled by anything he said because he was completely honest about his qualifications. In addition, he informed the Governor's staff that he would complete the work he contracted to do prior to his interview in September. However, if he was appointed to the Board, he would not do any more of appraisals in Kansas. His appointment was announced in October, but he did not take the position until November 17, 2003. He completed most of his work in Kansas between October and November, and any remaining work was completed by the end of the year.

Senator Corbin noted that fax communications received by himself and other members deal with the issue of Mr. Slack's qualifications. He asked staff to clarify what term Mr. Slack is being appointed to. Ms. Gregory said Mr. Slack was appointed to fill the unexpired term of Calvin Roberts, who retired last year. At this point, he is filling a position for an individual who is experienced in real estate, property valuation, and appraisal until he is reappointed or someone else is appointed. She explained, as upcoming appointments become open, each subsequent appointment will be made according to the provisions of the newly enacted structure.

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Senator Corbin explained that a letter of good standing from the Missouri Department of Economic Development states that Mr. Slack successfully completed his CPA license in Missouri. He commented that the statute does not indicate where the CPA Board member must be licensed but simply states that the member must be a CPA. He noted that the letter also states that Mr. Slack has been a CPA certificate holder since 1984 and asked for an explanation of the difference between an CPA holder and a regular CPA. Mr. Slack could not give an exact definition but said that the difference is similar to attorneys in Kansas who can choose to be active or inactive. If a licensed CPA does not want to pay dues or maintain the license, he becomes a holder. At present he is licensed, but he has been a holder.

Senator Goodwin pointed out that K.S.A. 74-2433, as amended in 2003, provides that BOTA shall be composed of three members, one of which is to be an attorney and one of which is to be a Certified Public Accountant. Both professional members are to have engaged in active practice in their respective professions for a period of at least five years. She asked Mr. Slack to confirm that the Governor said that he was not required to be a CPA. Mr. Slack clarified that he did not visit with the Governor but with Shirley Allen and an attorney to whom Ms. Allen referred him to research the issue. The research indicated that Mr. Roberts' appointment was made under the old structure; therefore, Mr. Slack's qualifications made no difference in filling Mr. Roberts' unexpired term. Mr. Slack said that it was his understanding that the Governor would then have time to designate one position as the attorney, one position as the CPA, and one position with a person with general real estate knowledge. He would be designated as the person with general real estate knowledge, and BOTA members Mr. Keen and Mr. Patten would be replaced with someone with five years active practice as a CPA and someone with five years active practice as an attorney.

Senator Goodwin asked Mr. Slack if he still has a business relationship as an appraiser with Terrill-Neill, counsels who have an extensive BOTA practice. Mr. Slack said he no longer has any active on-going cases with Ms. Terrill or Mr. Neill. He noted that he testified two or three times before BOTA for matters in which they were involved. To date, there has been one BOTA case dealing with a request for a rehearing on an apartment complex he appraised in 2000. He recused himself from that hearing. In the two months he has served, this is the only instance in which he had to recuse himself. He noted that he has no idea how many cases pending at BOTA concern property which he appraised before he was appointed to the Board. He acknowledged that concerns have been expressed as to whether or not he would have a continuing problem with conflict of interest. He explained that everyone who had an active property tax appeal case regarding property he appraised knew that he would recuse himself from their case. He noted that, so far, Mr. Keen and Patten have recused themselves from more cases than he has. He explained that, as a real estate appraiser, property taxes were between 10% and 30% of his business. Of those, less than half are in Kansas. Therefore, if he serves a four year term, he anticipates that there will no conflict of interest occurring after the first year.

Ms. Gregory confirmed for Senator Pugh that the designated position Mr. Slack will fill does not require that he be a CPA or lawyer. Mr. Slack confirmed that he is licensed as a CPA and as a lawyer in Missouri, but not in Kansas. Senator Corbin commented that concerns were expressed to several legislators that Mr. Slack was not qualified because he was not a CPA. He confirmed with Ms. Gregory that Mr. Roberts, whom Mr. Slack replaced, did not meet the requirements for a CPA under the new statute. Mr. Slack confirmed for Senator Pugh that he has not submitted appraisals to the Board since he was appointed. In addition, he confirmed for Senator Lee that he currently is not doing appraisals as an expert appraiser or any other appraisals in Kansas. He noted that a condemnation proceeding in Kansas City, Kansas, regarding widening I-35 has been appealed. In his opinion, it would be a burden on his client if he did not testify in court on the matter. However, the case has nothing to do with property taxes and would not be before BOTA. Mr. Slack emphasized that he would not hear cases involving property he appraised before being appointed to the Board. Furthermore, he does not intend to do any appraisal work in Kansas as long as he is a member of BOTA to ensure that inadvertent conflicts or other issues do not arise. He explained that he currently does very little appraisal work, but he has not completely closed down his business because it would have an adverse affect for him when his appointment expires four years from now.

Senator Oleen noted that she chairs the Confirmation Oversight Committee which considered Mr. Slack's appointment to fill the unexpired term of someone else. She noted that since that time, the interpretation of some was that he was to fill a position on the current Board which requires five years experience as a CPA. However, communication with the Governor's office since that issue was raised indicates that the Governor intends to fill the first full vacancy for the position which expired January 15, 2004, with a person who meets

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the requirement of five years experience as a CPA.

Senator Oleen then asked Mr. Slack if someone else in his firm is prepared to take charge of his appraisal business so that he can give his full attention to the BOTA position he will serve for four years. In response, Mr. Slack said that he is sacrificing income to take a position which is not a lifetime appointment. He went on to say that, if he allows his company to die, he would have to start over in four years when he will be 53. He explained that he and the gentleman he works with have their own corporation, but others in the office could help him somewhat. However, he sent all of his clients a letter stating that he will no longer be doing work in Kansas. He observed, "If you are not going to serve when you are asked, then don't complain what goes on." He commented that there were five Board members the last time he testified before BOTA, but only one member was present. When interviewed by the Governor's office, he indicated that he would not miss hearings because he feels that persons coming for a hearing deserve to have their case heard by as many Board members as possible.

Senator Oleen requested that, before a decision on Mr. Slack's appointment is made by the full Senate, BOTA provide the Committee with information as to if other BOTA appointees have the same track record as Mr. Slack relative to their assignment of work and also the recusal rate for current Board members.

Senator Corbin commented that the questions he had were answered. In his opinion, Mr. Slack meets the qualifications for the BOTA position. He noted that, due to the recusal issue, perhaps legislation passed last year reducing then number of BOTA members from five to three should be the subject of a summer interim study.

Senator Lee moved to approve Mr. Slack's appointment to the Board of Tax Appeals, seconded by Senator Pugh. The motion carried with Senators Goodwin and Oleen abstaining.

The meeting was adjourned at 11:50 p.m.

The next meeting is scheduled for February 10, 2004.